

THEODORE J. ALMASY

IBLA 82-1125

Decided December 13, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, approving certain lands for conveyance to Doyon Limited. AA 8103-2.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Third-Party Interests -- Mining Claims: Determination of Validity -- Mining Claims: Patent

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

APPEARANCES: Theodore J. Almasy, pro se; Elizabeth S. Ingraham, Esq., Fairbanks, Alaska, for Doyon Limited; Robert C. Babson, Esq., Office of the Regional Solicitor, Department of the Interior, for Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

On April 30, 1979, the Alaska State Office, Bureau of Land Management (BLM), issued two decisions designating lands proper for selection by a regional corporation and approving the lands for interim conveyance to Doyon Limited (Doyon) on behalf of the village of Nikolai. See 44 FR 25937 through 25940 (May 3, 1979). The approved lands included all of T. 26 S., R. 22 E., Kateel River meridian, Alaska.

On June 8, 1979, Theodore J. Almasy, on his own behalf and for his partner Margaret L. Mespelt, appealed the decisions to the Alaska Native Claims Appeal Board (ANCAB, docket number RLS 79-12), 1/ asserting ownership of the lands in T. 26 S., R. 22 E., Kateel River meridian, based on their long use and occupancy of the lands and certain unspecified unpatented mining claims.

On June 26, 1978, ANCAB ordered the segregation of this township from the remainder of the lands selected by Doyon so that conveyance of those lands would not be delayed pending decision in this appeal.

By partial decision dated February 27, 1980, ANCAB ruled that use and occupancy of lands prior to December 18, 1971, other than pursuant to specific statutory authorization not claimed by appellant, does not give rise

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1/ Secretarial Order No. 3078, dated Apr. 29, 1982, abolished the Alaska Native Claims Appeal Board and transferred its functions to the jurisdiction of the Interior Board of Land Appeals effective June 30, 1982. 47 FR 22617 (May 25, 1982). Interim regulations at 43 CFR Part 4 implementing this organization change were published in the Federal Register on June 18, 1982 (47 FR 26390).

to any valid existing right in the land on the part of a third party as against a grantee Native corporation. Appeal of Theodore J. Almasy, 4 ANCAB 151, 87 I.D. 81 (1980). ANCAB reserved for further consideration the issues raised by appellant's allegation of ownership of various unpatented mining claims and ordered appellant to produce a list of those claims located in T. 26 S., R. 22 E., Kateel River meridian. Id. at 166, 87 I.D. at 88.

On March 24, 1980, appellant filed a list of 110 lode and placer mining claims recorded with BLM as claims AA 033627 through AA 033736 and seven claims without serial numbers located in T. 26 S., Rs. 21 and 22 E., Kateel River meridian. 2/

By order dated October 27, 1980, ANCAB identified the mining claims in T. 26 S., R. 22 E., Kateel River meridian, as encompassing some portion of secs. 5-8, 17, 19, and 20 and all of sec. 18 and proposed to segregate these lands from the remainder of the lands in the township so that the lands unaffected by this appeal could be conveyed to Doyon. Appellant responded that the areas identified did not cover all of his mining claims and submitted his own list of lands for segregation. Doyon objected to the proposed segregation because the segregation would be in less than whole sections.

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2/ Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), required the owner of an unpatented mining claim located on public land on or before Oct. 21, 1976, to file a copy of the official record of the notice of location and related documents with the BLM on or before Oct. 22, 1979. In addition, the owner of such claim is required to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30 of each calendar year thereafter. Failure to file the required documents conclusively constitutes abandonment of the claim by the owner under the Act. See generally 43 CFR Part 3833.

Appellant subsequently suggested that secs. 5-8, 17-20, and 29-32 be segregated in their entirety, but ANCAB did not issue another segregation order.

By letter to ANCAB dated June 10, 1982, appellant urged ANCAB to "review its 'Order' and our modification request and issue an acceptable 'Order Segregating Lands' and close this case out."

The purpose of a segregation order is to release lands for conveyance that are unaffected by an appeal of a conveyance decision. Its purpose is not, as appellant's request seems to suggest, to remove the segregated lands from the decision approving conveyance. <sup>3/</sup> Thus, the suggested segregation order would not "close this case out" but would simply limit the lands addressed by this appeal to something less than the entirety of T. 26 S., R. 22 E., Kateel River meridian.

We find no basis for issuing another segregation order in this case now as the township at issue is otherwise segregated from conveyance in another appeal. <sup>4/</sup>

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<sup>3/</sup> In his correspondence to ANCAB appellant referenced several times an exclusion or attempted exclusion by Doyon of the lands encompassed by appellant's mining claims from its land selection entitlement. The record reflects that Doyon's selection application expressly included all of T. 26 S., R. 22 E., Kateel River meridian. There is no document in the record that constitutes a request from Doyon that the lands encompassed by appellant's mining claims be excluded from its land conveyance. Moreover, we note that ANCAB has held that 43 CFR 2651.4(e) does not permit a Native corporation to exclude lands within unpatented mining claims after the selection period has terminated. Oregon Portland Cement Co., 6 ANCAB 65, 88 I.D. 760 (1981).

<sup>4/</sup> By Notice dated November 17, 1980, the Regional Solicitor informed ANCAB that all of T. 26 S., R. 22 E., Kateel River meridian, is segregated in conjunction with the Appeal of Doyon Limited, ANCAB RLS 79-10(c). That appeal, docketed as IBLA 82-1124, is pending before this Board and the segregation order dated May 30, 1980, issued by ANCAB remains in effect.

We turn to the issue of whether BLM erred in failing to exclude the lands encompassed by appellant's unpatented mining claims from the conveyance to Doyon.

[1] Section 22(c) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(c) (1976), provides:

(c) Mining claims; possessory rights, protection

On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent.

Departmental regulation 43 CFR 2650.3-2 governing mining claims on selected lands reads in part:

(a) Possessory rights. Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any unpatented mining claim may be contested by the United States, the grantee of the United States or its successor in interest, or by any person who may initiate a private contest. \* \* \*

(b) Patent requirements met. An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976 on lands conveyed to village or regional corporations.

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(c) Patent requirements not met. Any mineral patent application filed after December 18, 1976, on land conveyed to any

village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

The status of unpatented mining claims located prior to the enactment of ANCSA on land subsequently selected by a Native corporation has recently been reviewed by the United States Court of Appeals for the Ninth Circuit. In a suit brought by owners of such unpatented mining claims seeking a declaratory judgment and injunctive protection against BLM's conveyance of their alleged vested property rights in the claims, the court examined section 22(c) of ANCSA and the Department's regulations and held that ANCSA permits the Federal Government to convey lands subject to validly located mining claims and that the 5-year time limitation on the ability to patent placed on such claims by ANCSA is constitutional. Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981). Accord, United States Steel Corp., 7 ANCAB 106, 89 I.D. 293 (1982) (involving unpatented millsite claims).

We conclude that BLM may convey T. 26 S., R. 22 E., Kateel River meridian, to Doyon notwithstanding the existence of mining claims owned by appellants in that township and that appellant's rights to those mining claims are protected, although limited, by section 22(c) of ANCSA and 43 CFR 2650.3-2 until conveyance. <sup>5/</sup> This land will not be conveyed until the appeals involving it have been resolved. 43 CFR 4.21(a). Until then

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<sup>5/</sup> Doyon has urged that BLM is required to adjudicate the validity of unpatented mining claims within Native-selected lands prior to conveyance. It is now well established, however, that BLM is not required to adjudicate mining claims before conveyance. United States Steel Corp., *supra*; Oregon Portland Cement Co., *supra*. See Alaska Miners v. Andrus, *supra* at 580.

appellant is entitled to whatever consideration the applicable law may afford. See 43 CFR 2650.0-5(j); 43 CFR 2650.3-2.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, as amended (43 FR 26390 (June 18, 1982)), the decision of the Alaska State Office is affirmed.

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Will A. Irwin  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Melvin J. Mirkin  
Administrative Judge  
Alternate Member